



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12535/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 10th May 2019**

**Decision & Reasons Promulgated
On 22nd May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**TM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Konusanac of Igor & Co Solicitors

For the Respondent: Miss J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appealed against a decision of Judge Malcolm (the judge) of the First-tier Tribunal (the FtT) promulgated on 17th January 2019.
2. The Appellant is an Algerian national who claims to have been living in the UK since May 2001. He applied for leave to remain on private life grounds on 20th June 2012 which was refused on 13th September 2013. He made a further claim on 15th November 2013 which was refused on 8th January 2014 and a reconsideration request refused on 12th February 2014. The Appellant then made further submissions, claiming asylum, on 17th

November 2015, which was refused by the Respondent on 15th October 2018.

3. The Respondent contended that this decision did not confer a right of appeal as it was a rejection of further submissions, not a refusal of a protection and human rights claim. A Duty Judge at Arnhem House, Leicester decided that the decision was in fact appealable.
4. The international protection claim was based upon the Appellant's military service in Algeria between 1995 and 1997. He claimed to have witnessed civilians who were killed by the army and he feared the Algerian government because of what he had witnessed, and he also feared terrorists in Algeria because he had served in the army.
5. The appeal was heard by the FtT on 28th November 2018. The judge found that the Appellant would not be at risk if returned to Algeria. The judge found that the Appellant had delayed his asylum claim by fourteen years without giving a satisfactory explanation. The judge did not find, even taking the Appellant's evidence at its highest, that while undertaking military service he witnessed human rights abuses, and the judge did not find that he would be at any risk on return either from the government in Algeria or from terrorist groups.
6. The judge found that Article 8 was engaged on the basis of the Appellant's private life but there would be no breach as the Appellant's removal from the UK to Algeria would be proportionate. The appeal was dismissed on all grounds.
7. The Appellant applied for permission to appeal to the Upper Tribunal. It was contended that the judge had erred in law in considering the asylum claim, and the Article 8 claim, including consideration of paragraph 276ADE(1)(vi).
8. Permission to appeal was granted by Judge Hollingworth of the FtT in the following terms;

"It is arguable that the judge has attached insufficient weight to the evidence of Professor Joffe in evaluating the criteria pursuant to paragraph 276ADE and in not considering that compelling circumstances existed enabling a consideration of whether there would be a breach of Article 8 outside the rules and in carrying out a proportionality exercise. The permission application identifies the salient aspects of the expert evidence of Professor Joffe which in these contexts should arguably have been fully evaluated and the weight to be attached to them set out."

Error of Law

9. On 4 April 2019 I heard submissions from the parties regarding error of law. On behalf of the Respondent it was contended that the judge had not materially erred in law and had made findings which were open to make on the evidence.

10. On behalf of the Appellant it was confirmed that there was no challenge to the findings made by the judge in relation to refusal of asylum and no challenge to the findings that the Appellant would not be at risk on return. It was contended that the judge had erred in considering Article 8 and paragraph 276ADE, having not taken into account and analysed the expert report of Professor Joffe.
11. I set out below paragraphs 9-16 of my error of law decision dated 4th April 2019 which contain my reasons for finding an error of law and setting aside the decision of the FtT;
 9. The judge considered Article 8 at paragraphs 123-137 of the decision. At paragraph 128 the judge found that it was clear from medical evidence that the Appellant suffers from depression and has suffered from recurrent depression over the years. The judge did not doubt the Appellant's evidence that when he was in Algeria his father paid for medication for him. It was not in dispute that the Appellant's father had now passed away.
 10. The judge found at paragraph 129 that if the Appellant was required to return to Algeria appropriate medical treatment would be available to him and that medication would be available free of charge. It is unclear how the judge reached this conclusion as there is no reference to evidence that was considered to bring about that conclusion.
 11. The judge in considering Article 8 does not make any reference to Professor Joffe's expert report. The expert report at paragraph 127 concludes that the Appellant would not be able to access the state medical services. The opinion is given that the Appellant would be disadvantaged by his mental state in relation to finding employment given high levels of unemployment. The opinion is given that the Appellant's health will seriously decline if he returns to Algeria because of his current medical condition, and the lack of support that he would receive in Algeria.
 12. The judge finds that the Appellant would be able to access free medication, and would be able to find employment and accommodation, given that the Appellant has extended family in Algeria.
 13. I find that the judge erred in law in failing to analyse and explain why the opinion of the expert was not given any weight. There is simply no reference to the expert report when Article 8 and paragraph 276ADE are being considered. In my view that amounts to a material error of law. The judge has not considered potentially material evidence and should have made findings upon that evidence.
 14. Therefore the decision must be set aside and re-made. There was no challenge to the findings made by the judge in relation to asylum and humanitarian protection, and those findings made by the judge in relation to risk on return stand. Those findings are that the Appellant would not be at risk on return.

15. I do not consider it appropriate, having considered the Senior President's Practice Statements at paragraph 7, to remit this appeal to the FtT to be heard again.
16. There will be a further hearing before the Upper Tribunal. It is a matter for the Appellant as to whether any further evidence is called. The Tribunal will arrange for an Arabic interpreter. If further oral evidence is not required the Appellant must notify the Tribunal immediately that the interpreter is not needed. The purpose of the next hearing is to consider Article 8 and paragraph 276ADE(1)(vi) of the Immigration Rules.

Re-making the Decision

12. At the resumed hearing I ascertained that I had all documentation upon which the parties intended to rely. I had the documentation that had been before the FtT. This amounts to the Respondent's bundle, two bundles submitted on behalf of the Appellant, one containing 256 pages and the other 116 pages, together with a list of essential reading. In addition, a skeleton argument had been prepared in relation to the issues to be considered by the Upper Tribunal, and the Appellant produced a further witness statement dated 30th April 2019 and a letter from his sister who resides in the UK, dated 26th April 2019. There was also a letter from a lawyer in Algeria dated 29th April 2019 confirming the living arrangements of the Appellant's family in Algeria, email communication dated 17th April 2019 between the Appellant's solicitors and Professor Joffe, and letters from the Appellant's GP, Dr Raphael dated 26th April 2017 and 8th June 2018.
13. The Appellant gave oral evidence, adopting his witness statement dated 30th April 2019. He was questioned by the representatives. I have recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them here. If relevant I will refer to the oral evidence when I set out my findings and conclusions.
14. I then heard oral submissions which I summarise very briefly below.
15. On behalf of the Respondent it was submitted that there would be no very significant obstacles if the Appellant returned to Algeria. He had confirmed in evidence that he had a large family in Algeria and that he remains in contact with them. Although there was some medical evidence regarding the depression that the Appellant suffers, there was no up-to-date psychiatric report. The fact that there may be a lack of space for the Appellant in the family home does not amount to very significant obstacles or compelling circumstances.
16. I was referred to background evidence, and Professor Joffe's report and it was submitted that it was clear that adequate medical facilities are available in Algeria.
17. The evidence did not demonstrate that the Appellant had been continually receiving medication while in the UK, and his own evidence indicated that he had been in employment continually since his arrival in 2001.

18. On behalf of the Appellant reliance was placed upon the skeleton argument. I was asked to take into account that the Appellant had lived in the UK for eighteen years. He did not claim to have established family life in this country, although he does have a sister living here who has her own family, and had established a private life that engaged Article 8.
19. It was accepted that the Appellant had received medical treatment in the UK and that he had received treatment in Algeria for depression.
20. I was asked to find that the Appellant would have to pay for medication in Algeria and he would be unable to do so. That would mean that his mental health would suffer, and he would not be able to find employment, and he would not have accommodation. The combination of his inability to access medication, lack of accommodation, and lack of employment amounted to very significant obstacles to his integration.
21. If I did not accept that there would be very significant obstacles to integration, I was asked to allow the appeal with reference to Article 8 outside the Immigration Rules and to place substantial weight upon the expert report of Professor Joffe.
22. At the conclusion of oral submissions I reserved my decision.

My Conclusion and Reasons

23. The findings made by the FtT to the effect that the Appellant would not be at risk if returned to Algeria stand. The Appellant now accepts that he is not entitled to a grant of asylum or humanitarian protection, and his removal from the UK would not breach Articles 2 or 3 of the 1950 Convention.
24. The issue that I have to decide is whether there would be very significant obstacles to the Appellant's integration into Algeria. The burden of proof in relation to that issue is on the Appellant and the standard is a balance of probabilities. In deciding this appeal I am conscious of the balance sheet approach recommended at paragraph 83 of Hesham Ali [2016] UKSC 60. In relation to Article 8 the burden of proof lies on the Appellant to establish his personal circumstances in the UK, and to establish that Article 8 is engaged, and why the decision made by the Respondent interferes disproportionately in his private life rights in this country. It is for the Respondent to establish the public interest factors weighing against the Appellant. The standard of proof is a balance of probabilities throughout.
25. It is clear that the Appellant has established a private life in the UK. I accept that he arrived in this country in May 2001. The Appellant does not contend that he has established family life in this country which would engage Article 8 and that concession is rightly made. The Appellant is a single man, not in a relationship, and he does not have children.
26. I accept that the Appellant has an adult sister in the UK who has her own family. The Appellant is currently residing with her.

27. The Appellant has family members in Algeria. I accept the Appellant's evidence that he has three brothers and four sisters living in Algeria, as well as his mother. The three brothers and their families live with the Appellant's mother in the family home. The sisters are married and do not live in the family home. The Appellant confirmed in oral evidence that his grandfather had four sons who have now passed away, but their families remain living in Algeria in the same area as his family home. Therefore the Appellant has a number of cousins, living in the same area as his brothers and sisters. The Appellant confirmed that he is in contact with his mother. The Appellant stated in oral evidence, when asked whether he had asked his family whether they could assist him to find employment, that he did not have a good relationship with his family. The Appellant had previously not mentioned that he did not have a good relationship with his family and I do not accept that evidence. Prior to that remark, which was in response to a question I asked by way of clarification, the Appellant had made no mention of not having a good relationship with his family in Algeria. The Appellant was also asked whether he had enquired with his family whether they could assist him with accommodation, and his response was that his mother had asked him not to return to Algeria.
28. I find as a fact that the Appellant does have numerous family members in Algeria, and he has not asked them whether they could assist him with employment or help him with accommodation. I find that when in Algeria the Appellant served in the army for a two year period between 1995 and 1997. There is documentary evidence received from Algeria, to the effect that he received medication for depression.
29. I accept the Appellant's evidence that he has had continual employment in the UK. He has worked in hotels as a room attendant, a kitchen porter and a house porter. The Appellant has never had leave to remain in the UK, and has never had permission to work.
30. There is no evidence that the Appellant received any treatment for mental health difficulties in the UK until 2013. I have considered a letter from Dr Grewal who is a consultant psychiatrist. The letter is dated 21st October 2013 and confirms that Dr Grewal was privately instructed by the Appellant, to respond to questions set out in a UK Border Agency letter dated 30th July 2013. Dr Grewal had been given access to medical notes obtained from Algeria.
31. Dr Grewal diagnosed the Appellant as suffering from "recurrent depressive disorder, current episode mild". The medical notes from Algeria confirmed that the Appellant was treated for major depressive episodes between December 1997 and October 1999. The Appellant's current depressive episode is described as being in the mild range of severity. The Appellant was not receiving treatment for the recurrent depressive disorder. Dr Grewal gave the opinion that the Appellant was likely to be fit to return to Algeria after his symptoms of depressive disorder have been adequately treated, which was likely to occur between six and eight months after initiation of treatment.

32. I have taken into account a further letter written by Dr Grewal dated 27th August 2015. Dr Grewal described the Appellant as not having a GP, and appeared to be developing early symptoms of post-traumatic stress disorder. Dr Grewal diagnosed Paroxetine, and Zopiclone tablets.
33. It appears that after the consultation with Dr Grewal in August 2015, the Appellant consulted a GP who is Dr Raphael, who has provided letters dated 9th November 2016, 15th December 2016, 27th April 2017, and 8th June 2018. The first letter is brief, confirming that the Appellant suffers with a mixed anxiety and depression disorder which Dr Raphael believes is directly related to the asylum seeking process. The second letter, dated 15th December 2016, is also very brief, describing the Appellant as suffering from a combination of anxiety, depression and post-traumatic stress.
34. The letter dated 26th April 2017 describes the Appellant having a diagnosis of mixed anxiety and depressive disorder, with features of post-traumatic stress, and confirms that for the past eighteen months the Appellant has been treated with an antidepressant medication, Citalopram. Dr Raphael comments that he is aware that the Appellant attempted suicide while in Algeria. The letter dated 8th June 2018 gives further detail in relation to previous suicide attempts, stating that the Appellant said he first felt suicidal in 1998 and he felt suicidal on several occasions that year but took no action, other than to cut his right upper arm with window glass.
35. With reference to the Appellant's medical condition, I find that he did not receive any medication prior to meeting Dr Grewal in 2015, and since approximately the latter part of 2015 he has been receiving Citalopram and his diagnosis is anxiety and depression. I do not find there is a formal diagnosis of post-traumatic stress disorder. The Appellant, on his own evidence, was able to work in the UK without medication until he was prescribed medication in 2015, shortly before he made his claim for international protection in November 2015.
36. Background evidence, including the expert report of Professor Joffe which is dated 14th August 2015, confirms that antidepressant medication is available in Algeria. I accept that the medical facilities in Algeria would not be of the same standard as the medical facilities in the UK. I accept the Appellant's evidence that when he received medication while in Algeria, his father paid for this. I also accept that his father has now passed away.
37. Professor Joffe considered mental health services in Algeria at paragraphs 111-117 of his report. Financing of medical services is contained at paragraphs 118-121. I accept Professor Joffe's opinion that there is state medical care in Algeria and private medical care. I accept that hospital costs are covered by the state but this is not the case with outpatient costs, where patients who are entitled to state health care would initially have to pay but would then be reimbursed. I accept Professor Joffe's opinion at paragraph 127 that the Appellant would not be able to access state medical services as he has not been contributing to the funding

body. If he was hospitalised then medical services would be free but outpatient treatment would need to be paid for and he would not be reimbursed.

38. I also accept Professor Joffe's opinion at paragraph 127(b) that there is a shortage of housing in Algeria, and at paragraph 127(c) levels of unemployment in Algeria are officially 10% of the work force, but in reality 15%.
39. I do not accept Professor Joffe's view at paragraph 127(e) that the Appellant's state of health would seriously decline if he returned to Algeria. I do not find that this is within Professor Joffe's role as an expert. Professor Joffe bases this opinion on a lack of support, and the Appellant's fears over the continuing interest of the security and intelligence services in him. It has been found by the Tribunal, that the security and intelligence services in Algeria would not have any interest in the Appellant.
40. In considering paragraph 276ADE(1)(vi) I follow the guidance in Treebhawon [2017] UKUT 00013 (IAC) in which it was found that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of very significant obstacles.
41. In relation to integration I follow the guidance in Kamara [2016] EWCA Civ 813. At paragraph 14 it is explained that there must be a broad evaluative judgment. It must be considered whether an individual is enough of an insider in terms of understanding how life in the society in the country of return is carried on. The individual must have the capacity to participate in life in that country and have a reasonable opportunity to be accepted there and operate on a day-to-day basis. The individual must be able to build up within a reasonable time a variety of human relationships to give substance to their private or family life.
42. I find the Appellant has failed to discharge the burden of proof for the following reasons. I accept that the Appellant has been absent from Algeria for a substantial period of time but he remains a citizen of that country. He has spent the greater part of his life in Algeria. He would have no language or cultural difficulties if he returned. He would not be at risk if returned.
43. I find that there would be family support.
44. The Appellant is in touch with his family in Algeria. There are numerous family members. He confirmed that some of his family have employment although not in well paid jobs. I do not accept the Appellant would be unable to find employment. He entered the UK without leave and has remained without leave but has managed to have employment, on his own evidence, since his arrival. He has therefore obtained employment in a country where he does not speak English, and he had no permission to work. The Appellant maintained employment without medication up until 2015. He still has employment.

45. The Appellant has confirmed that he can speak English. This may be of some assistance to him in seeking employment in the hotel and hospitality industry in Algeria. The unemployment rate described by Professor Joffe, does not in my view indicate that the Appellant would be unable to find employment. The Appellant has considerable experience in employment.
46. The Appellant has not made any enquiries as to the availability of employment. I therefore do not accept his evidence that he would be unable to find employment. The Appellant would be prescribed medication that he can take to Algeria with him. I find that there would be some family support in relation to accommodation, and the Appellant would be able to find his own accommodation once he has found employment, and would be able initially to pay for medication. I see no reason why, once he has been in employment for a while, he would not be able to access the state medical services, which would mean that he would then be reimbursed for outpatient treatment and medication.
47. With reference to suicide, there is no reference to this in the medical notes from Algeria. There has been no attempt at suicide while in the UK. The Appellant in his latest witness statement at paragraph 11 states "I would again think of ending my life unfortunately. I do not want to live in Algeria in a hopeless situation". I have taken into account the guidance in J [2005] EWCA Civ 629 and Y [2009] EWCA Civ 362. I do not find that the evidence demonstrates a real risk of suicide. The Appellant does not have a genuine fear of ill-treatment in Algeria. He is concerned that he will not have the same standard of living in Algeria as in the UK, but my finding is that there would be some family support, and there is no satisfactory reason why he would not be able to find employment in Algeria, where it is accepted there is mental health care.
48. I conclude, for the above reasons, the Appellant does not satisfy paragraph 276ADE(1)(vi). I therefore conclude that the Appellant cannot satisfy the Immigration Rules. This is relevant but not determinative. This does not mean that his appeal must fail. I must consider whether there are any exceptional circumstances which would result in unjustifiably harsh consequences if the Appellant had to return to Algeria.
49. I have regard to the considerations in section 117B of the Nationality, Immigration and Asylum Act 2002. The maintenance of effective immigration controls is in the public interest. I place weight upon the fact that the Appellant cannot satisfy the Immigration Rules, and has been in the UK without leave since his arrival.
50. It is in the public interest that a person seeking leave to remain can speak English and is financially independent. I accept that the Appellant can speak English and is financially independent and these are neutral factors in the balancing exercise.
51. Little weight should be placed upon a private life established by an individual when in the UK with a precarious immigration status or without leave. This does not mean no weight must be attached, but I do find it

appropriate to attach little weight to the private life established by the Appellant. The Appellant made no attempt to regularise his immigration status for approximately eleven years after his arrival.

52. In my view the weight that must be attached to the maintenance of effective immigration controls outweighs the weight to be attached to the wishes of the Appellant to remain in the UK. I do not find that the Appellant has demonstrated that there are any exceptional circumstances which would lead to unjustifiably harsh consequences if he was refused leave to remain in the UK. I fully appreciate that the Appellant wishes to remain in this country, and that he has lived here for a substantial period of time. He has not however lived in this country for twenty years which is the period required in order to satisfy paragraph 276ADE(1)(iii). In my view the medical evidence does not indicate that there is a real risk of suicide. The Respondent's decision, in all the circumstances, is proportionate, and the Appellant's removal from the UK would not breach Article 8.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. I substitute a fresh decision.

I dismiss the Appellant's appeal on asylum grounds.

I dismiss the appeal on humanitarian protection grounds.

I dismiss the appeal on human rights grounds.

An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

17th May 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT

FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date

17th May 2019

Deputy Upper Tribunal Judge M A Hall